

City of Dubuque/Dubuque Assn. of Professional Firefighters, Local #353

2007-2008
CEO 147
SECTOR 2

IN THE MATTER OF FACT-FINDING

BETWEEN

REPORT OF FACT-FINDER

CITY OF DUBUQUE, IOWA

March 21, 2008

AND

DUBUQUE ASSOCIATION OF PROFESSIONAL
FIREFIGHTERS, LOCAL #353

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I. APPEARANCES

For the City:

Randy Peck, Human Resources Director and Spokesperson

For the Union:

Michael J. Meloy, Attorney at Law and Spokesperson

David Beaves, President Local 353 and Medical Officer

Bob Rehfeldt, Fire Equipment Operator

Bill Laban, Firefighter

Chuck Blasen, Lieutenant

David Grass, Medical Officer

II. BACKGROUND

The undersigned was selected by mutual agreement of the parties to conduct a fact-finding hearing under the statutory impasse procedures of the Iowa Public Employment Relations Act, Sections 20.19 and 20.21. The hearing was held Friday, March 7, 2008 at the Carnegie-Stout Public Library, Dubuque, Iowa. The hearing was formally opened at

10:00 a.m. and closed at 3:00 p.m. after both parties' presentation of evidence and oral argument. The parties mutually agreed to extend the deadline for the fact-finder's written report beyond the statutory fifteen days. They agreed that this report should be completed and mailed no later than Monday, March 31, 2008.

The City of Dubuque (hereinafter also referred to as "City" or "Employer") is located in far eastern Iowa along the Mississippi River and is the state's sixth largest city with a population at the last census of 57,546. The Dubuque Association of Professional Firefighters, Local #353 (hereinafter referred to as "Local #353" or "Union") is the certified bargaining representative for employees in the ranks of Firefighter, Fire Equipment Operator (FEO), Medical Officer (MO), Fire Lieutenant and Fire Captains. The unit consists of 81 employees when fully staffed and the parties have been bargaining for many years. The current agreement between the parties is for one year and expires on June 30, 2008. (Joint Ex. #1). The parties agree that the fact-finder should recommend a one-year agreement for the current negotiations/impasse.

The following impasse issues were presented to the fact-finder: (1) base wages, (2) EMT pay, (3) out-of-rank/temporary assignment pay, (4) health insurance and (5) family sick leave.

Although there are no statutorily mandated criteria to be applied or considered by fact-finders under the Iowa Public Employment Relations Act, the statute does list specific criteria to be considered by an interest arbitrator. Section 22, Paragraph 9 of the Iowa Public Employment Relations Act directs arbitrators to consider, in addition to any other relevant factors, the following factors:

1. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

2. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
4. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

While recognizing that the present matter is not an arbitration proceeding, the assessment of the evidence and the findings and recommendations contained herein have taken into consideration the above criteria.

In addition to this Union, the City also has formal bargaining relationships with its non-supervisory police officers represented by the Dubuque Police Officers Association, a largely white collar non-supervisory unit represented by the Operating Engineers, a non-supervisory largely blue collar unit represented by the Teamsters and a non-supervisory transit unit represented by the Amalgamated Transit Union.

The parties agreed on external comparability: the five cities with populations greater than Dubuque and the one city next smaller in population (statewide, according to the last census). These cities are, with their respective populations in parentheses: Des Moines (193,187), Cedar Rapids (108,751), Davenport (95,333), Sioux City (80,505), Waterloo (66,467) and Council Bluffs (54,315). The parties also agreed that the City is not making an inability to pay argument and that the City has the resources to fund the proposals of either of the parties.

III. ISSUE-BY-ISSUE DISCUSSION AND RECOMMENDATION

Although the following discussion is presented in an issue-by-issue order, the fact-finder has studied all of these impasse issues as sub-parts of a combined total impasse and the fact-finder's recommendations are to be understood in their total context.

1. Base Wages:

The Union proposes that effective July 1, 2008, through June 30, 2009 the wage plan (base wage) in effect on June 30, 2008 shall be increased by: 3.35% for Firefighter, Fire Equipment Operator and Medical Officer; 3.85% for Fire Lieutenant and 4.35% for Fire Captain. The City proposes that effective July 1, 2008 through June 30, 2009, the wage plan (base wage) in effect on June 30, 2008, shall be increased by 3.35% across-the-board.

The Union argues that its proposal is supported by reported settlements in the comparability cities and that the higher increases for Fire Lieutenant and Fire Captain are needed to begin to address a salary deficiency in these ranks when compared to the other cities. (Assoc. Exs. #14 through #18).

The City argues that its proposal is supported by the voluntary settlements with the Police Association, Operating Engineers Union and Teamsters Union bargaining units. Employees represented by these unions and all non-bargaining unit employees will receive a 3.35% across-the-board base wage increase effective July 1, 2008 through June 30, 2009. (City Narrative, pp. 21).

The fact-finder notes that, after reading last year's fact-finding report and arbitration award, the parties' arguments and evidence in this hearing are similar to several of the arguments and evidence relied upon last year. The City's narrative quotes from many earlier fact-findings and arbitrations with the City of Dubuque and consistency of settlements within the City of Dubuque has been a long-standing principle that will again be honored by this neutral.

There simply is not enough comparability support to recommend the Union's proposal to increase the Lieutenant rank by an additional one-half percent (0.5%) and the Captain rank by an additional one percent (1.0%) at this time. Such a recommendation would constitute a fundamental change to the parties' past salary structure and should not be recommended by a neutral absent a showing of compelling need and that previous attempts to negotiate said change by mutual agreement have been unreasonably refused.

The Union's exhibits do not reflect the impact that longevity has on comparability. The employees in this bargaining unit are able to reach the maximum rate of pay in two and one-half years (2 ½) years, the shortest length of service requirement of any city in the comparison group. The longevity schedule for this bargaining unit is as follows: after five (5) years, one percent (1%) of base pay; after ten (10) years, two percent (2%) of base pay; after fifteen (15) years, three percent (3%) of base pay; after twenty (20) years, four percent (4%) of base pay; after twenty-five (25) years, seven percent (7%) of base pay. The City's longevity pay is among the highest in its comparability group. There is insufficient comparability evidence to support recommending the Union's tiered wage increase proposal at this time.

2. EMT Pay:

The current contract language was recommended last year by Fact-Finder Ronald Hoh and awarded by Arbitrator John L. Sandy. The Union is proposing no changes to the current language whereas the City wants to change the language back to what it was before last year's impasse resolution.

The fact-finder has read Fact-Finder Hoh's report and Arbitrator Sandy's award as well as the parties' exhibits regarding this issue. The City argues that the Union's attempts to change/increase EMT pay had been rejected by several neutrals over several years and that the decisions made by the neutrals last year should be reversed. The fact-finder believes that rejecting last year's impasse resolution would not serve the best interests of the parties. The statutory impasse procedure is intended to result in a final and binding resolution. If neutrals were to too easily change these resolutions in subsequent hearings the statutory intent would be undermined. There is no evidence that last year's resolution is so plainly and palpably erroneous as to be upset. As such, the current EMT pay language is recommended to be continued.

3. Out of Rank/Temporary Assignment Pay:

Currently, firefighters receive an additional payment in the amount of \$18.42 for each work day (24 consecutive hours) that an employee is temporarily assigned to work in a higher job classification.

The Union is asking that the current contract language be deleted, to be replaced with the following language:

Any employee temporarily working in a higher job classification shall receive the hourly rate of pay for the actual hours working in the higher job classification. An employee in the rank of Firefighter, Fire Equipment Operator or Medical Officer, working in the higher of Fire Captain shall receive the hourly rate of pay of a Fire Lieutenant for the actual hours worked in the higher job classification of Fire Captain. An employee in the rank of Fire Lieutenant working in the higher job classification of Fire Captain shall receive the rate of pay for a Fire Lieutenant. An employee of any rank who works in the higher job classification of Assistant Chief shall be paid the hourly rate of pay for the actual hours in the higher job classification of Assistant Chief.

The Union's proposal would change the method of calculating temporary assignment pay, rather than the current fixed amount, and reduce the eligibility requirement for receiving temporary assignment pay from after twenty-four (24) hours of work to after one (1) hour of work.

The City opposes the Union's proposed new language and argues that the current language is supported by both internal and external comparability. No other City employee receives such pay after one hour. The Union's current contract pays after just twenty-four (24) hours whereas other employees only receive such pay after working 15 or 20 consecutive work-days in a higher classification or there is no provision for such pay at all. (City Ex. #41). Only two comparability cities pay after one (1) hour. The other four cities pay after twenty-four (24) hours and, depending upon which position the employee is assigned and the nature of the vacancy being filled on a temporary basis, after 10 or 20 calendar days. (City Ex. #42).

Entirely new contract language of this nature should not be recommended by a neutral without a clear demonstration of need and strong comparability support, neither

of which has been presented at this hearing. As such, the fact-finder is unwilling to recommend the Union's proposed out of rank/temporary assignment pay language.

4. Health Insurance:

The current contract language provides that employees pay 10% of the cost of the premium established for the health and prescription drug insurance plan for which the employee is enrolled. This language was agreed to by the parties in 2005 for the fiscal year 2006 contract in exchange for a 2.4% "insurance off-set" increase to wages as an increase intended to off-set the new employee contribution to the cost of health care. At arbitration that same year, Arbitrator Lisa Salkovitz Kohn refused to award caps on the employees' contributions. (City Ex. 2006 Arb. Award). Today, the current language provides that: "[I]n no event shall an employee pay more than \$125 per month for the Family Plan, \$100 per month for the Single Plus One Dependent Plan or \$50 per month for the Single Plan." This language was recommended last year by Fact-Finder Ronald Hoh and awarded by Arbitrator John L. Sandy. (Jt. Ex. #1, Article 18, Section 1).

The Union is proposing to change the current language by lowering the percentage that employees pay from ten percent (10%) to five percent (5%). The City wants to keep the employee percentage unchanged, but to change the current language by removing the monthly dollar caps awarded last year.

The fact-finder is not persuaded to recommend either party's proposed change. There is sufficient comparability support, especially internal comparability, to continue the ten percent (10%) employee contribution. The fact-finder has studied the City's arguments regarding why Fact-Finder Hoh and Arbitrator Sandy erred last year when they

recommended and awarded dollar caps on the employee contributions. For the reasons previously discussed by this neutral regarding the finality of a previously awarded impasse resolution the City's burden is great. The fact-finder does not find that last year's impasse resolution was so plainly and palpably erroneous as to be upset. As such, the current health insurance language is recommended to be continued.

5. Family Sick Leave:

Currently, Article 26, Sick Leave, Section 2 states: Employees shall be granted sick leave with pay for any of the following reasons:

Life threatening illness or serious injury of an emergency nature of members of the employee's immediate family provided the family member is a legal dependent of the employee. Said absence is limited to the duration of the emergency and shall be approved by the Fire Chief.

The Union proposes to delete this language and to replace it with the following:

An employee can use up to 72 hours per year, of their accumulated sick leave to care for illness or injury of an immediate family member residing at the employee's residence.

The Union states that prior approval by the Fire Chief is their primary concern and the Union argues that four (4) of the six comparability cities provide sick leave use for immediate family illness without prior approval by the Fire Chief. (Assoc. Ex. #38).

The City argues that the current language should be continued and that there is no justification for a change. City Exhibit #52 reports that no comparability city allows seventy-two (72) hours of unapproved sick leave to be used for family illness. Two (2) cities are reported as allowing forty-eight (48) hours and one is reported as allowing

thirty-two (32) hours and the remaining city is reported as allowing unapproved sick leave to be to be with a member of the employee's family who has a contagious disease that requires the family member to be quarantined.

The fact-finder does not find sufficient evidence in the record to recommend a change to the current language. A neutral should recommend changes to current language only after a showing that there is an on-going problem with the current language and that one of the parties is unreasonably refusing to address said problem at the bargaining table. At this time, the record does not support recommending the Union's proposal on family sick leave.

V. SUMMARY

The fact-finder recommends an across-the-board wage increase of three point three five percent (3.35%).

The fact-finder recommends no change to the current contract's EMI pay language.

The fact-finder recommends no change to the current contract's out of rank/temporary assignment pay.

The fact-finder recommends no change to the current contract's health insurance language.

The fact-finder recommends no change to the current contract's family sick leave language.

All of the issues that were presented have been discussed and it is hoped that the fact-finder's recommendations will prove helpful to the parties.

Dated this 21st day of March,
2008, Sycamore, Illinois.

Respectfully submitted,



Curtiss K. Behrens
Fact-Finder

CERTIFICATE OF SERVICE

I certify that on the 21st day of March, 2008, I served the foregoing Report of Fact-Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. Michael J. Meloy
Attorney at Law
2828 18th Street, Suite 4
Bettendorf, Iowa 52722

Mr. Randy Peck
Human Resources Director
50 West 13th Street
Dubuque, Iowa 52001

I further certify that on the 21st day of March, 2008, I submitted this Report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.


Curtiss K. Behrens, Fact-Finder